

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEHEDI,) CV-21-6374-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) JANUARY 6, 2022
)
VIEW, INC. F/K/A CF FINANCE) PAGES 1-23
ACQUISITION CORP. II ET AL,)
)
DEFENDANT.)
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE MOVANT: **BY: KATHLEEN A. HERKENHOFF**
KAPLAN FOX & KILSHEIMER LLP
1999 HARRISON STREET, SUITE 1560
OAKLAND, CA 94612

FOR THE DEFENDANT: **BY: JOHN MICHAEL GILDERSLEEVE**
VIEW, MULPURI MUNGER, TOLLES, OLSON LLP
350 S. GRAND AVE., 50TH FL
LOS ANGELES, CA 90071

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

APPEARANCES CONTINUED:

FOR THE MOVANT:
SONTHALIA

BY: IVY T. NGO
ROCHE FREEDMAN LLP
1 SE 3RD AVENUE, SUITE 1240
MIAMI, FL 33131

FOR THE MOVANT:
STADIUM CAPITAL

BY: FREDERIC S. FOX
JASON URIS
KAPLAN FOX & KILSHEIMER
850 THIRD AVENUE, 14TH FLOOR
NEW YORK, NY 10022

1 SAN JOSE, CALIFORNIA

JANUARY 6, 2022

2 P R O C E E D I N G S

3 (COURT CONVENED AT 9:02 A.M.)

4 THE CLERK: CALLING CASE 21-6374. MEHEDI V. VIEW
5 INC., ET AL.

6 COUNSEL, IF YOU WOULD PLEASE STATE YOUR APPEARANCES, AND
7 IF WE COULD BEGIN WITH THE PLAINTIFF AND THEN MOVE TO
8 DEFENDANT.

9 MS. HERKENHOFF: GOOD MORNING, YOUR HONOR.

10 KATHLEEN HERKENHOFF --

11 THE COURT: I'M LOSING SOUND HERE.

12 DID THAT CHANGE, TIFFANY, OR WAS THAT MY COMPUTER?

13 THE CLERK: NO, YOUR HONOR. IT WAS VERY FAINT.

14 THE COURT: MS. HERKENHOFF, COULD YOU RESTATE THAT.

15 MS. HERKENHOFF: YES.

16 GOOD MORNING, YOUR HONOR.

17 THE COURT: NO, YOU'RE THE ONE I'VE LOST. YOU
18 STARTED OFF STRONG AND THEN IT SWITCHED.

19 MS. HERKENHOFF: I APOLOGIZE.

20 THE COURT: ARE YOU USING HEADPHONES?

21 MS. HERKENHOFF: YES, I AM.

22 THE COURT: YOU MIGHT TRY JUST -- THE SPEAKER MUST BE
23 TOO FAR AWAY.

24 MS. HERKENHOFF: LET ME SEE IF I CAN ADJUST THAT,
25 PERHAPS YOU CAN TAKE THE OTHER APPEARANCES FIRST.

1 MS. NGO: GOOD MORNING, YOUR HONOR.

2 MY NAME IS IVY NGO ON BEHALF OF ROCHE FREEDMAN ON BEHALF
3 OF LEAD PLAINTIFF, MOVANT, SWETA SONTHALIA.

4 THE COURT: GOOD MORNING, MS. NGO.

5 MS. NGO: GOOD MORNING.

6 MS. HERKENHOFF: GOOD MORNING, YOUR HONOR.

7 CAN YOU HEAR ME NOW?

8 THE COURT: NO. I DON'T KNOW WHERE YOUR SPEAKER IS.

9 MS. HERKENHOFF: I HAVE A SPEAKER IN FRONT OF ME.

10 THE COURT: WHO ARE YOU REPRESENTING, MS. HERKENHOFF?

11 MS. HERKENHOFF: MOVANT, STADIUM CAPITAL.

12 THE COURT: OKAY. WELL, I DO NEED TO HEAR YOUR
13 ARGUMENT.

14 MS. HERKENHOFF: YES, THAT WOULD BE HELPFUL.

15 I APOLOGIZE, YOUR HONOR. I HAVE A MICROPHONE IN FRONT OF
16 ME, I'M NOT SURE WHAT THE ISSUE IS.

17 THE COURT: I DON'T THINK THE COURT REPORTER COULD
18 TAKE DOWN A RECORD. LET'S GET EVERYBODY ELSE'S APPEARANCES AND
19 WE WILL SEE WHAT WE CAN DO HERE.

20 MR. FOX: GOOD MORNING, YOUR HONOR.

21 FREDERICK FOX, CAPLAN FOX & KILSHEIMER. I'M WITH
22 MS. HERKENHOFF, AND WE REPRESENT THE MOVANT, STADIUM CAPITAL.

23 THE COURT: GOOD MORNING.

24 MR. URIS: GOOD MORNING, YOUR HONOR.

25 JASON URIS, ALSO OF CAPLAN FOX & KILSHEIMER ON BEHALF OF

1 MOVANT, STADIUM CAPITAL.

2 THE COURT: GOOD MORNING.

3 MR. GILDERSLEEVE: GOOD MORNING, YOUR HONOR.

4 THE COURT: NOW I'VE LOST YOU, MR. GILDERSLEEVE. I
5 CAN'T HEAR YOU.

6 THE CLERK: HE'S NOT ON MUTE.

7 COUNSEL, CAN YOU MOMENTARILY MUTE YOURSELF AND THEN
8 UNMUTE?

9 MR. GILDERSLEEVE: YES. CAN YOU HEAR ME NOW?

10 THE COURT: YES.

11 MR. GILDERSLEEVE: I'M SORRY, YOUR HONOR.

12 JOHN GILDERSLEEVE FOR VIEW AND DR. MULPURI, THE
13 DEFENDANTS.

14 THE COURT: GOOD MORNING.

15 MS. HERKENHOFF, THE ONLY OTHER THING I CAN SUGGEST IS YOU
16 SIGN OFF AND COME BACK IN AND SEE IF THAT CAN MAYBE HELP WITH
17 THE SOUND.

18 MS. HERKENHOFF: IS IT ON NOW, MAY I ASK?

19 THE COURT: SO IT'S ON, BUT IT'S SO FAINT.

20 MS. HERKENHOFF: I WILL TRY WHAT YOU SUGGESTED AND I
21 WILL BE RIGHT BACK.

22 THE COURT: OKAY.

23 MS. HERKENHOFF: ARE YOU ABLE TO HEAR ME NOW?

24 (OFF-THE-RECORD DISCUSSION.)

25 THE COURT: OKAY. I'M GOING TO GO TO ANOTHER MATTER.

1 I'M SO TIGHT ON TIME BECAUSE I HAVE SO MANY HEARINGS. I'M
2 GOING TO LET YOU ALL DO THIS OFFLINE SO MS. HERKENHOFF CAN TRY
3 TO USE A DIFFERENT DEVICE.

4 LET'S GO ON TO PRESCOTT. AND WE WILL COME RIGHT BACK, I
5 WILL DO YOURS NEXT, I WON'T MAKE YOU WAIT TOO LONG BECAUSE I
6 KNOW YOU ALL WOULD LIKE TO HAVE THIS HEARD.

7 THE CLERK: COUNSEL THAT IS ALREADY CONNECTED, YOU
8 CAN JUST TAKE YOUR VIDEOS DOWN AND THEN I WON'T HAVE TO PROMOTE
9 YOU AGAIN.

10 AND MS. HERKENHOFF, IF YOU NEED TO SIGN BACK OUT AND THEN
11 JOIN, I WILL WATCH FOR YOU TO JOIN AS WELL.

12 (THE PROCEEDINGS WERE PAUSED AT 9:08 A.M.)

13 (THE PROCEEDINGS RESUMED AT 9:44 A.M.)

14 THE COURT: OKAY. WE WILL GO BACK TO THE MEHEDI
15 CASE.

16 THE CLERK: COUNSEL, IF YOU WOULD ENGAGE YOUR VIDEOS.

17 MS. HERKENHOFF: KATHLEEN HERKENHOFF, CAPLAN FOX &
18 KILSHEIMER. AND WITH ME TODAY ARE FREDERIC FOX AND JASON URIS
19 OF OUR NEW YORK OFFICE. AND I AM HERE ON BEHALF OF MOVANT,
20 STADIUM CAPITAL, LLC.

21 THE COURT: ALL RIGHT. GOOD MORNING.

22 I THINK EVERYONE ELSE MADE THEIR APPEARANCES, AND SO LET'S
23 JUMP IN. I'M TRYING TO KEEP ON A SCHEDULE.

24 FIRST OF ALL, THANK YOU SO MUCH FOR RESPONDING SO QUICKLY
25 TO MY REQUEST FOR THE CHART. I FOUND MYSELF TRYING TO PIECE

1 TOGETHER THE DIFFERENT CHARTS, AND THEN IN ONE OF THE REPLY
2 BRIEFS THERE WAS AN ACKNOWLEDGEMENT OF A MATHEMATICAL ERROR
3 WHICH I REALLY APPRECIATE, BUT THEN I REALIZED I WAS LOST ON
4 THE NUMBERS. AND MY JOB IS NOT THE ARITHMETIC, YOU WOULDN'T
5 WANT TO LEAVE THAT TO ME.

6 SO I HAVE THIS AGREED UPON CHART, THAT UNDER THESE VARIOUS
7 THEORIES, THESE ARE THE NUMBERS, AND SO NOW WHAT WE CAN DO
8 TODAY IS WE CAN FOCUS ON THE PROPER APPROACH THAT I SHOULD
9 APPLY, WHETHER IT WOULD BE THE RECOVERABLE LOSS METHOD OR THE
10 ACTUAL LOSS METHOD UNDER WHAT WE WILL CALL LIFO. AND FOR OUR
11 COURT REPORTER, THAT'S ALL CAPITALS, L-I-F-O, OR THE DURA,
12 D-U-R-A, ADJUSTED LIFO.

13 I DON'T THINK IT'S ANY SURPRISE TO YOU, I GENERALLY FAVOR
14 IN CASES LIKE THIS WITH THESE FACTUAL CIRCUMSTANCES, THE
15 RECOVERABLE LOSS METHOD SO THAT WE CAN CLEAR OUT THE -- OR BE
16 MORE CERTAIN OF ELIMINATING WHAT I WILL CALL THE NOISE IN THE
17 LOSS CALCULATION.

18 SO LET ME START WITH MS. NGO FOR MS. SONTALIA ON YOUR
19 ARGUMENT.

20 MS. NGO: GOOD MORNING, YOUR HONOR.

21 AND I JUST APOLOGIZE IF MY VOICE SOUNDS ODD, I WOKE UP
22 WITH THIS TICKLE.

23 THE COURT: I CAN HEAR YOU.

24 MS. NGO: OKAY. SO UNLIKE IN ENPHASE THE INITIAL
25 COMPLAINT FILED IN THIS CASE ALLEGES A SINGLE CORRECTIVE

1 DISCLOSURE AFTER THE MARKET CLOSED, AND ENDS THE CLASS PERIOD
2 THAT DAY. SO ANY PURCHASES DURING THE CLASS PERIOD WOULD NOT
3 HAVE ANY IMPACT FROM THE ALLEGED FRAUD BECAUSE THE ALLEGED
4 FRAUD WAS CLOSED AFTER THE MARKET.

5 ENPHASE WAS UNIQUE IN THE SENSE THAT IT INVOLVED A SINGLE
6 ENTRY DATE IN THE CORRECTIVE DISCLOSURE WHICH WAS ALSO INCLUDED
7 IN THE DEFINED CLASS PERIOD. ALSO IN ENPHASE, THE COMPETING
8 MOVANTS ALL SOLD THEIR REMAINING STOCKS ON THAT DAY.

9 AND SO AS YOUR HONOR IS AWARE, WE WERE THE FIRM THAT
10 PROPOSED THIS ADJUSTED LIFO METHOD. BUT THAT WAS TO TAKE INTO
11 ACCOUNT, OR TRYING TO HARMONIZE THE CASE LAW IN THIS DISTRICT
12 RELATING TO RECOVERABLE LOSS IN SINGLE DROP CASES. AND WITH
13 THE FACTS ALLEGED, WHICH WERE THAT THE STOCK WAS -- THE FRAUD
14 WAS DISCLOSED EARLIER IN THE DAY. AND SO THE METHOD PROPOSED
15 GAVE A CONSISTENT DISCOUNT TO ALL SHARES BOUGHT AND SOLD ON
16 THAT DAY TO TAKE INTO ACCOUNT THE FRAUD IMPACT.

17 AND SO THAT WAS OUR METHOD WE PUT FORTH THERE. NONE OF
18 THAT EXISTS HERE. THERE'S NO REASON TO USE AN ARTIFICIAL STOCK
19 PRICE OF JUST BEFORE THE CORRECTED DISCLOSURE. THIS IS MORE
20 OF, I GUESS YOU WOULD CALL, RUN OF THE MILL CORRECTIVE
21 DISCLOSURE CASES, WHERE THERE IS A CLASS PERIOD WHICH THERE IS
22 CURRENTLY ALLEGED NO IMPACT ON STOCK PRICE RELATING TO FRAUD,
23 OF ANY CORRECTIVE DISCLOSURES.

24 THE COURT: WHY WOULD YOU CALL THE STOCK PRICE ON THE
25 DATE BEFORE THE DISCLOSURE ARTIFICIAL? AREN'T YOU RELYING ON

1 THE ACTUAL STOCK PRICE ON THAT DAY?

2 MS. NGO: WE ARE ON THE METHOD THAT WE ARE PROPOSING,
3 THE RECOVERABLE LOSS, AND YOU CAN SEE THAT IN THE CHART THAT WE
4 SUBMITTED YESTERDAY.

5 SO UNDER THE DURA LIFO, YOU WILL SEE, I GUESS THE
6 ALTERNATIVE PROPOSAL BASED ON THE RETAINED SHARES METHOD, WE
7 ARE USING THE PURCHASE PRICE ON BOTH DAYS.

8 IN STADIUM CAPITAL'S PROPOSAL, THEY ARE USING AS A
9 PURCHASE PRICE, THE STOCK PRICE IMMEDIATELY PRIOR TO THE
10 CORRECTIVE DISCLOSURE.

11 THE COURT: SO, I MEAN, I'M SORRY FOR THIS TO SOUND
12 SO MUNDANE, BUT IN IGNORANCE OF THE ANNOUNCEMENT TO BE MADE THE
13 NEXT DAY, IF ANY ORDINARY STOCKHOLDER WERE TO LOOK AT THEIR
14 PORTFOLIO ON AUGUST 15TH AND SAID, I THINK I'M GOING TO SELL
15 EVERYTHING, THAT WOULD JUST BE THE NATURAL PRICE OF THE STOCK,
16 UNAFFECTED BY THE DISCLOSURE, CORRECT?

17 MS. NGO: CORRECT. BUT THAT WOULD BE IF YOU ACTUALLY
18 SOLD ON THAT DAY.

19 THE COURT: RIGHT.

20 BUT THAT'S WHY I'M SAYING, SO THE VALUE OF ANY
21 SHAREHOLDER'S PORTFOLIO OF THIS STOCK WAS THE \$5.18 PER SHARE
22 THAT STADIUM IS REPRESENTING; IS THAT CORRECT? YOU DON'T
23 DISAGREE WITH THAT.

24 MS. NGO: I DON'T DISAGREE THE STOCK PRICE
25 IMMEDIATELY BEFORE THE CORRECTIVE DISCLOSURE WAS \$5.18, BUT I

1 THINK THAT'S WHY LOSS CAUSATION THEORIES END UP BEING VERY
2 COMPLICATED IN THESE CASES AND VERY FACT SPECIFIC.

3 SO IN ENPHASE, THE STOCK PRICE DURING THE CLASS PERIOD WAS
4 VARIABLE. IN, I THINK ANOTHER CASE THAT WE HAD RAISED IN ALL
5 OF OUR PAPERS, WAS THE MARKETTE CASE, AND IN MARKETTE, THE
6 STOCK PRICE INCREASED THROUGHOUT THE CLASS PERIOD.

7 AND SO THE MARKETTE CASE ALSO USED THE PRICE RIGHT BEFORE
8 THE CORRECTIVE DISCLOSURE, BUT THEY DID MAXIMIZE THE POTENTIAL
9 LOSSES OF THE CLAIMANTS, BECAUSE IN THAT CASE, THE STOCK PRICE
10 DECREASED.

11 IN VIEW, IN OUR CURRENT CASE, THE STOCK PRICE ACTUALLY
12 INCREASED THROUGHOUT THE CLASS PERIOD. SO BY USING THE STOCK
13 PRICE RIGHT BEFORE THE CORRECTIVE DISCLOSURE, YOU ARE NOT
14 HONORING THE CONCEPT OF MAXIMIZING THE LEAD PLAINTIFF'S
15 POTENTIAL DAMAGES IN THIS CASE.

16 THE COURT: CAN I ASK ANOTHER QUESTION, AND I REALLY
17 APPRECIATE THAT IT APPEARS THAT YOU'VE UPDATED THE AVERAGE
18 VALUE OF THE SHARES FOR THE FULL 90 DAYS, WHICH HAS NOW RUN AND
19 HAD NOT RUN WHEN YOU FILED THE PAPERS.

20 MS. NGO: CORRECT.

21 THE COURT: BUT WHAT YOU ARE SHOWING ME IS THAT THE
22 AVERAGE SHARE PRICE OVER THE 90 DAYS AFTER THE ANNOUNCEMENT IS
23 HIGHER THAN IT WAS THE DAY BEFORE THE ANNOUNCEMENT; IS THAT
24 CORRECT?

25 MS. NGO: THAT IS CORRECT.

1 AND SO WHEN THE PSLRA WAS ENACTED, THIS 90-DAY PERIOD WAS
2 PUT IN IN ORDER TO PUT A LIMIT ON DAMAGES FOR RETAINED SHARES
3 FOR THE OPPOSITE SCENARIO WHEN THE STOCK PRICE CONTINUED TO GO
4 DOWN. SO IF DEFENDANTS, IF THEY WERE LIABLE FOR SECURITIES
5 FRAUD, WOULD NOT CONTINUE TO BE ON THE HOOK FOR THE CONTINUING
6 DECREASE OF THEIR STOCK PRICE.

7 THE COURT: THAT'S THE 90 DAYS.

8 MS. NGO: RIGHT.

9 AND IN THIS CASE, THE 90-DAY AVERAGE DID INCREASE, AND
10 THAT WOULD GENERALLY INDICATE THAT POTENTIALLY POSITIVE NEWS
11 HAD COME OUT DURING THE 90 DAYS THAT INCREASED THE STOCK PRICE.

12 FOR PURPOSES OF SECURITIES FRAUD COMPLAINTS, THE FRAUD
13 THAT IS ALLEGED IS ALLEGED TO BE FULLY DISCLOSED AS OF THE
14 CORRECTIVE DISCLOSURE.

15 THE COURT: YES, YES.

16 MS. NGO: SO IT'S IRRELEVANT WHAT HAPPENS IN THE
17 90-DAY PERIOD.

18 NOW IF THE CLASS PERIOD CHANGES, AND THINGS LIKE ANY
19 INCREASES NEED TO BE DEALT WITH LATER, THEN THAT IS A FACT
20 ISSUE FOR LATER DOWN THE ROAD.

21 THE COURT: OKAY.

22 MS. NGO: AND I UNDERSTAND --

23 THE COURT: WHEN YOU ARE TELLING ME ABOUT THE
24 PURCHASE PRICE -- SO THE COST OF THE SHARES WAS 60,424 SHARES
25 TIMES THE PURCHASE PRICE. AND THE PURCHASE PRICE FOR YOUR

1 CLIENT, FOR MS. SONTALIA, WAS HOW MUCH? I'M LOOKING AT THE
2 CHART YOU SENT ME YESTERDAY IN YOUR COLUMN A.

3 MS. NGO: IT WAS A VARIABLE PRICE, SO IT'S LISTED
4 HERE.

5 THE COURT: OH, THAT'S WHY, THAT'S FAIR. RIGHT.

6 MS. NGO: IN DOCKET 30-2 --

7 THE COURT: SO YOU ARE JUST TELLING ME THAT OVER THE
8 ENTIRE CLASS PERIOD, YOU'VE TAKEN THE ACTUAL PURCHASE PRICE,
9 YOU'VE DONE THE ARITHMETIC ON THIS.

10 MS. NGO: CORRECT.

11 THE COURT: OKAY. SO I DON'T NEED TO BE CONCERNED
12 WHAT THE ACTUAL WAS, JUST THE TOTAL.

13 MS. NGO: RIGHT.

14 SO IN THE TWO PROPOSALS MS. SONTALIA PRESENTS, THE NUMBER
15 OF SHARES IS WHAT CHANGES FOR STADIUM CAPITAL. MS. SONTALIA
16 RETAINS ALL HER SHARES, SO THERE'S NO DIFFERENCE BETWEEN THE
17 APPROXIMATE OR ACTUAL LOSS IN THE RETAINED SHARES CALCULATION.
18 THE DIFFERENCE FOR STADIUM CAPITAL IS SIMPLY THAT, I GUESS WHAT
19 YOU WOULD CALL IT, WE CALL IT ZEROED OUT DURING THE CLASS
20 PERIOD THREE TIMES, AND SO YOU ONLY TAKE INTO ACCOUNT THE LAST
21 60,000 SHARES THAT THEY PURCHASED.

22 THE COURT: OKAY.

23 MS. NGO: AND THAT'S WHY THAT NUMBER CHANGES, BUT
24 OTHERWISE THE PURCHASE PRICE STAYS THE SAME FOR BOTH METHODS.

25 AND THEN THE SALE PRICE STAYS THE SAME FOR MS. SONTALIA

1 BECAUSE SHE RETAINED HER SHARES, AND THEN FOR STADIUM CAPITAL,
2 IT INCLUDES THE ACTUAL PURCHASE PRICE OR THE RETAINED PRICE,
3 DEPENDING ON THEIR SHARES.

4 THE COURT: OKAY.

5 ANYTHING ELSE YOU WOULD LIKE TO ADD? THANK YOU FOR
6 WALKING ME THROUGH THAT.

7 MS. NGO: NO WORRIES.

8 AS A YOUNG ATTORNEY, I WAS TOLD THAT LOSS CAUSATION IS THE
9 MOST DIFFICULT THING TO WRAP YOUR HEAD AROUND IN SECURITY FRAUD
10 CASES, SO I DO APPRECIATE YOUR EFFORTS TO GET TO THE BOTTOM OF
11 THIS.

12 THE COURT: ALL RIGHT.

13 LET ME TURN TO, MS. HERKENHOFF, ARE YOU GOING TO TAKE THE
14 LEAD FOR STADIUM? OH, YOU ARE ON MUTE.

15 MS. HERKENHOFF: YOUR HONOR'S COMMENTS WERE VERY
16 TELLING THIS MORNING AND ALIGNED WITH MY ARGUMENT, WHICH IS
17 THAT IF YOU LOOK AT THE LOSS CHART UNDER ANY OF THE VARIOUS
18 CALCULATIONS, IT'S ONLY OUR CLIENT, STADIUM CAPITAL, WHO HAS A
19 LOSS.

20 AND THERE'S A SPECTACLE IN THIS CHART, WHICH IS THE GAIN
21 OF 3,000, THAT'S REFLECTED UNDER WHAT YOUR HONOR'S METHODOLOGY
22 IS IN ENPHASE.

23 AND SPEAKING BROADLY TO THE CHART, THE FALLACY IN THE
24 CHART IS THAT CALLING THE MIDDLE APPROACH A DURA LIFO, AND I
25 UNDERSTAND THE COURTS IN THIS DISTRICT HAVE CALLED IT THAT, AND

1 I'M NOT SAYING THAT IT DOESN'T HAVE ITS PLACE, BUT DURA, IF YOU
2 LOOK AT THE LANGUAGE IN IT, WHICH YOUR HONOR DID SO CAREFULLY
3 IN ENPHASE, IT EMPHASIZES THAT THE PURCHASE PRICE IS OFTEN
4 INFLATED BY THINGS THAT MAY BE UNRELATED TO THE FRAUD.

5 SO YOU REALLY HAVE TO ZERO IN ON THE LOSS CAUSATION AND
6 THE PURCHASE PRICE, PARTICULARLY WHEN IT'S SO FAR BACK IN TIME
7 OF THE CLASS PERIOD, IS NOT INDICATIVE OF WHAT WILL ULTIMATELY
8 BE THE LOSS CAUSATION ANALYSIS AND WHAT WILL HAPPEN HERE.

9 YOUR HONOR HIT THE NAIL ON THE HEAD, HAD THE SAME IDEA
10 THAT I HAD, REALLY IT'S YOUR PORTFOLIO, THAT DAY BEFORE THAT
11 ONE DISCLOSURE COMES OUT, THAT VALUE, THAT IS REALLY WHAT'S
12 FOCUSED ON IN DURA.

13 AND THERE'S SOME LOOSE LANGUAGE IN DURA BELOW THAT SAYS
14 SOMETIMES THE PURCHASE PRICE MAY BE TAKEN INTO ACCOUNT. BUT IF
15 YOU READ THAT PARAGRAPH FURTHER, IT ACTUALLY IS SORT OF GIVING
16 A POLITE NOD NOT NINTH CIRCUIT AND SAYING, WELL, REALLY THAT'S
17 INSUFFICIENT.

18 AND SO IT'S OUR POSITION THAT CASES THAT TRY TO SAY, UNDER
19 DURA, YOU CAN SOMETIMES LOOK AT THE PURCHASE PRICE, FOR
20 PURPOSES OF THIS CASE, THIS SET OF FACTS, THIS ANALYSIS OF AN
21 ACCOUNTING METHODOLOGY THAT HAS RATIONAL CONSISTENCY APPLIED
22 FOR LEAD STATUS, IT -- YOU REALLY SHOULDN'T BE LOOKING AT
23 PURCHASE PRICES SO FAR BACK IN THE CLASS PERIOD.

24 THE CLASS PERIOD PURCHASE PRICE STARTED FAR HIGHER THAN
25 THEY WERE RIGHT BEFORE THE TRIGGERING EVENT OF LOSS CAUSATION,

1 AND THAT'S WHY IT RESONATED WITH ME WHAT YOUR HONOR SAID ABOUT
2 THE VALUE OF THE PORTFOLIO.

3 AND HERE, AMONG THE MANY DIFFERENT ARGUMENTS WE HAVE ON
4 WHY OUR CLIENT SHOULD BE APPOINTED LEAD, AND THESE GO MORE
5 POSSIBLY TO IF YOUR HONOR WERE INCLINED TO GO WITH THE OTHER
6 MOVANT, YOU HAVE TO THINK ABOUT THE FACT THAT THEY WILL BE
7 SADDLED FROM THE OUTSET, AND THIS CLASS, WITH THIS GAIN THAT
8 SHOWS IN THIS CHART. AND I KNOW THE GOOD FOLKS AT MUNGER
9 TOLLES WHO ARE HERE TODAY, ARE GOING TO HAVE A FIELD DAY WITH
10 THAT.

11 AND SO WHY START OFF A CASE THAT'S SO IMPORTANT AND BURDEN
12 THE CLASS WITH A LEAD PLAINTIFF WHO HAS THAT SORT OF BAGGAGE,
13 TO BE HONEST. THERE ARE OTHER QUALITATIVE FACTORS BEYOND THE
14 NUMBERS, IF YOUR HONOR IS SATISFIED WITH THE NUMBER
15 PRESENTATION. AND AGAIN, AS I REEMPHASIZE, DURA BASICALLY SAYS
16 YOU ARE NOT SUPPOSED TO LOOK AT THAT PURCHASE PRICE, IT COULD
17 BE INFLATED BY OTHER THINGS.

18 AND SO THE TRUEST TEST IS WHAT YOUR HONOR DID IN ENPHASE.
19 IT WAS FOLLOWED BY JUDGE GILLIAM AND MARKETTE, AND VARIOUS
20 OTHER COURTS WE POINTED TO.

21 AND I THINK IT'S ALSO VERY TELLING IF YOU LOOK AT THE
22 PERLMUTTER CASE, WHICH DIDN'T COME UP IN THE INITIAL PAPERS,
23 BUT NOW THEY GLEAN TO IN THEIR CHART.

24 THE COURT: I HAD PERLMUTTER, BUT I DIDN'T KNOW
25 THAT'S WHAT WE WERE APPLYING HERE.

1 MS. HERKENHOFF: EXACTLY, YOUR HONOR. BECAUSE IN THE
2 MOVING PAPERS, NOBODY CITED THAT, AND IT'S REALLY MORE OF THE
3 OLD LIFO ANALYSIS.

4 IF YOU LOOK AT PERLMUTTER AND MANY OF THE OTHER CASES WE
5 DISTINGUISHED IN THE FOOTNOTE OF OUR REPLY BRIEF, THE ISSUE IS,
6 AS JUDGE KOH SO APTLY STATES IT AT STAR FOUR OF THAT OPINION,
7 IN SOME WAYS THE DISTINCTION BETWEEN THESE TWO CATEGORIES IS AN
8 ARTIFICIAL ONE, IN AS MUCH AS BOTH A PLAINTIFF'S ACTUAL LOSS
9 AND A PLAINTIFF'S POTENTIAL RECOVERY METHODS FOR BOTH
10 CATEGORIES SHOULD YIELD THE SAME RESULT.

11 HERE, THEY DO NOT. AND IT'S GLARINGLY OBVIOUS IN THIS
12 CHART. AND I REALLY THINK THAT YOUR HONOR WAS VERY WISE TO ASK
13 US TO PUT IN THIS CHART, BECAUSE THE 90-DAY HAD NOT RUN, AND
14 NOW LOOKING AT IT, THERE'S JUST THAT GLARING FIGURE THAT YOU
15 CAN'T GET PAST.

16 AND I, AGAIN, DON'T WANT THIS CLASS, THIS PROPOSED CLASS,
17 BURDENED WITH A REPRESENTATIVE WITH THAT GOING INTO IT.

18 THE COURT: OKAY.

19 MS. HERKENHOFF: YOU KNOW, I ALSO CAN'T HELP BUT RAVE
20 ABOUT THE FACT THAT MY PARTICULAR FIRM HAS BEEN IN THIS
21 DISTRICT MORE THAN 20 YEARS, IT'S BEEN LEAD IN SEVERAL CASES,
22 AND OUR CLIENT IS A U.S.-BASED, VERY SOPHISTICATED INVESTOR.
23 AND I AM NOT ATTEMPTING TO DISPARAGE MS. SONTALIA, BUT SHE IS
24 FROM SINGAPORE, AND I ROUGHLY RAN THE NUMBERS, AND OUR CLIENT,
25 I THINK WAS ALREADY A TRADER AT MORGAN STANLEY AT THE TIME OF

1 HER BIRTH.

2 SO OUR CLIENT HAS THE SOPHISTICATION, HAS LOSS UNDER EVERY
3 POSSIBLE ANALYSIS, HAS A FIRM THAT'S IN THE DISTRICT, AND IS
4 WILLING AND READY WILLING AND ABLE TO MOVE THIS CASE
5 SUCCESSFULLY FORWARD.

6 THE COURT: ALL RIGHT.

7 SO I'M NOT GOING TO EVALUATE THE COMPETING QUALIFICATIONS
8 OF THE PROPOSED LEAD PLAINTIFFS, BECAUSE IT'S ACTUALLY -- IT
9 ONLY COMES UP AS A REBUTTABLE PRESUMPTION. AND QUITE FRANKLY,
10 I STILL RECALL ONE OF MY EARLY PATENT TRIALS WHERE THE
11 PRESIDING JUROR WAS A 19-YEAR OLD JUNIOR AT STANFORD
12 UNIVERSITY. SO MS. SONTALIA MIGHT ACTUALLY RESONATE MORE FOR
13 A JURY IN SILICON VALLEY, IT'S HARD TO SAY. BUT NEITHER OF YOU
14 ATTEMPTS TO REBUT THE PRESUMPTION IF YOU ARE NOT THE -- IF YOUR
15 CLIENT DOESN'T HAVE THE GREATEST LOSS.

16 SO I'M NOT GOING TO GO THERE, AND MS. NGO, YOU DON'T HAVE
17 TO RESPOND TO THAT. THOSE ARE -- YOU KNOW, I DON'T PICK
18 PLAINTIFFS, DEFENDANTS DON'T PICK PLAINTIFFS. I ONLY HAVE TO
19 BE THE GATE KEEPER IF THERE'S SOME PROBLEM.

20 HOWEVER, THE POINT ON THE GAIN IS NOTED. I DON'T THINK
21 THAT'S A DEAL BREAKER, BUT IT'S CERTAINLY NOTED.

22 OKAY. MS. NGO, WOULD YOU LIKE TO MAKE ANY LAST COMMENT?

23 MS. NGO: YES, YOUR HONOR.

24 I WILL NOTE THAT JUDGE KOH IN THE PERLMUTTER CASE HAD
25 ACTUALLY USED OUR PROPOSED RETAINED SHARES CALCULATION, BECAUSE

1 SHE HAD USED THE ACTUAL PURCHASE PRICE.

2 GENERALLY IN THESE FRAUD CASES, IT ENDS UP BEING A
3 QUESTION FOR THE EXPERT AS TO HOW MUCH, IF FRAUD IMPACTS THE
4 STOCK PRICE EARLY, VERSUS THE MIDDLE, VERSUS THE END, AND AT
5 THIS VERY EARLY STAGE, THERE'S NO REASON TO BASICALLY GIVE A
6 DISCOUNT TO AN ENTIRE CLASS'S DAMAGES BY LIMITING THE ENTIRE
7 CLASS'S PURCHASE PRICE TO THE DAY BEFORE, WHEN THERE COULD HAVE
8 BEEN STATEMENTS MADE EARLY IN THE CLASS PERIOD WHICH ENCOURAGED
9 THEM TO BUY THE STOCK. AND THAT SHOULD BE INCLUDED IN THEIR
10 POTENTIAL DAMAGE CALCULATIONS.

11 THE COURT: SO I DID TAKE NOTE OF JUDGE KOH'S COMMENT
12 IN PERLMUTTER ON THIS VERY ISSUE OF EXPERT TESTIMONY, I THOUGHT
13 THAT WAS AN IMPORTANT POINT. BUT I DON'T BELIEVE THAT IF I
14 WERE TO CHOOSE STADIUM, THAT THE CLASS WILL BE LIMITED, IN ITS
15 DAMAGES PRESENTATION, TO HOW I CHOSE TO DETERMINE THE LEAD
16 PLAINTIFF.

17 AND I GUESS SOMEONE IS ALREADY WRITING THAT IN LIMINE
18 MOTION TO MAKE SURE IT DOESN'T HAPPEN. BUT WARNING TO
19 DEFENDANTS, I MEAN, THIS IS A DIFFERENT CALCULATION AND IT
20 WOULD BE WITHOUT PREJUDICE TO A FULL DAMAGES MODEL THAT MAY OR
21 MAY NOT BE ABLE TO JUSTIFY A STOCK PURCHASE PRICE THAT'S
22 DIFFERENT THAN THE \$5.18 REPRESENTED ON THIS CHART.

23 THESE ARE APPROXIMATIONS, THAT'S WHAT THE LAW SETS UP
24 HERE. MS. NGO, IT'S ACTUALLY A REALLY GOOD POINT THAT YOU
25 RAISE SO THAT I CAN KIND OF MARK MY PLACE ON THAT RIGHT NOW AND

1 NO ONE IS CONFUSED ABOUT THAT.

2 MS. NGO: RIGHT. YES.

3 AND I ALSO WANT TO NOTE THAT THERE IS NO COURT THAT HAS
4 APPLIED THIS STADIUM CAPITAL'S PROPOSAL WITHOUT THE FACTUAL
5 SCENARIO BACKING IT UP.

6 THERE'S HONESTLY NO REASON TO USE THE PURCHASE PRICE, THE
7 DAY BEFORE THE CORRECTIVE -- BEFORE THE CORRECTIVE DISCLOSURE
8 COMES OUT AS THE PURCHASE PRICE. THE ONLY REASON IT MADE SENSE
9 IN ENPHASE IS BECAUSE IN ENPHASE, IT WAS AN ENTRY DAY
10 DISCLOSURE.

11 AND IF YOUR HONOR RECALLS, AFTER THE LEAD PLAINTIFF BATTLE
12 IN ENPHASE, IN THE AMENDED COMPLAINT IN ENPHASE THEY HAD
13 AMENDED IT TO BE THE DAY BEFORE THE CORRECTIVE DISCLOSURE,
14 WHICH I THINK ALL OF US WHO HAVE DONE THIS FOR A LONG TIME, I
15 HAVE BEEN DOING THIS SINCE 2007, IN ORDER TO NOT CREATE
16 CONFLICTS FOR THE CLASS OR TO CREATE MORE CONSISTENT DAMAGE
17 THEORIES, WAS WHAT SHOULD HAVE BEEN DONE TO BEGIN WITH.

18 AND IF THEY HAD DONE THAT WITH THE FIRST COMPLAINT, WE
19 WOULD HAVE PUT FORTH MORE TRADITIONAL RETAINED SHARES, DURA
20 LIFE CALCULATION, AS THE PROPOSED LOSS THEORY. THERE WOULD
21 HAVE BEEN NO REASON TO ESSENTIALLY CREATE A NEW LOSS CAUSATION
22 THEORY FOR LEAD PLAINTIFF DAMAGES BECAUSE THERE WOULDN'T HAVE
23 BEEN THE FACTUAL -- HOW TO DEAL WITH THE FACTS, IT WAS AN ENTRY
24 DAY DISCLOSURE.

25 THE COURT: OKAY.

1 WELL, THOSE ARE EXCELLENT POINTS. I'M GOING TO REALLY
2 HAVE TO THINK ABOUT THIS, WHETHER I CONTINUE TO USE ENPHASE AND
3 MARKETTE, OR IF I LOOK MORE GENERALLY TO THE LIFO MODEL, YOU
4 HAVE GIVEN ME A LOT OF CASES.

5 I AM STILL LEANING TOWARD THE RECOVERABLE LOSS THEORY. I
6 THINK THAT I DO HAVE THE DISCRETION, I CERTAINLY HAVE TO SET
7 OUT THE REASONS FOR IT.

8 MS. HERKENHOFF --

9 MS. NGO: I WOULD JUST LIKE TO NOTE THEY ARE ACTUALLY
10 BOTH RECOVERABLE LOSS, THEY ARE DIFFERENT STRINGS OF
11 RECOVERABLE LOSS.

12 WHAT WE CALL "RETAINED SHARES" IS A RECOVERABLE LOSS, IT'S
13 JUST I WOULD ARGUE THE MORE MAJORITY VERSION OF THE RECOVERABLE
14 LOSS, WHEREAS STADIUM CAPITAL'S IS VERY NARROW INTERPRETATION
15 OF THE RECOVERABLE LOSS THEORY.

16 THE COURT: OKAY.

17 MS. HERKENHOFF: YOUR HONOR, I APPRECIATE YOUR TIME.

18 AND AGAIN, THEY LABELED IT DURA LIFO AND THEY HAVE AVOIDED
19 THIS RECOVERABLE LOSS THEORY, WHICH ACTUALLY IN ENPHASE, THEY
20 WERE PROPONENTS OF.

21 YOUR HONOR ALREADY NOTED THE MARKETTE CASE WHERE
22 JUDGE GILLIAM APPLIED THE PRICE THE DAY BEFORE THE CORRECTIVE
23 DISCLOSURE. SO TO SAY THERE AREN'T CASES THAT DID IT IS
24 INCORRECT.

25 BUT ALSO AGAIN, I THINK YOU HAVE TO LOOK QUALITATIVELY AT

1 THE NUMBERS. AND HERE WITH THIS CHART, THIS SCENARIO, AND THE
2 DIRECTION IN CAVANAUGH, THAT YOU LOOK AT THE PERSON WHO HAS THE
3 MOST TO GAIN FROM THE LAWSUIT, AND YOU ALSO HAVE TO BASE YOUR
4 CALCULATION ON SOMETHING THAT'S RATIONAL, RIGHT? IT'S NOT JUST
5 CONSISTENT, IT'S RATIONAL.

6 AND HERE, UNDER THIS ANALYSIS, THE ONLY RATIONAL APPROACH
7 THAT WE SEE IS WHAT YOUR HONOR SO APTLY DID IN ENPHASE, AND WE
8 WOULD ENCOURAGE YOUR HONOR TO DO THE SAME HERE.

9 THE COURT: OKAY. ALL RIGHT.

10 THANK YOU ALL. I APPRECIATE IT.

11 WHEN I PUT THIS ORDER OUT, I PRESUME THAT YOU WILL THEN
12 PROVIDE ME WITH A SCHEDULE FOR PERHAPS AN AMENDED COMPLAINT
13 THAT WILL BE NECESSARY AND A SCHEDULE FOR THE DEFENDANTS TO
14 RESPOND; IS THAT CORRECT?

15 MS. HERKENHOFF: YES, YOUR HONOR.

16 IF I MAY SPEAK TO THAT. WE CHECKED YOUR DOCKET AND THE
17 INITIAL COMPLAINT FILED HAD SET A SCHEDULE WHERE WITHIN TEN
18 DAYS OF APPOINTMENT, AND WE CERTAINLY WILL HONOR THAT.

19 THE COURT: OKAY. AND IF FOR SOME REASON THOSE DATES
20 DON'T WORK OUT AS WELL, YOU WILL GIVE ME A STIP AND ORDER ON
21 THAT.

22 MS. HERKENHOFF: YES.

23 THE COURT: OKAY. THANK YOU ALL.

24 THIS HAS BEEN VERY HELPFUL. MS. NGO, THANK YOU FOR THAT
25 REALLY THOUGHTFUL ARGUMENT, I APPRECIATE YOUR KNOWLEDGE ON IT,

1 YOU HELPED ME UNDERSTAND SOME OF THE DETAILS OF THE NUMBERS. I
2 APPRECIATE THAT.

3 MS. NGO: YOU ARE WELCOME.

4 THANK YOU, YOUR HONOR.

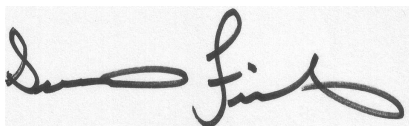
5 THE COURT: ALL RIGHT. THANKS.

6 (THE PROCEEDINGS WERE CONCLUDED AT 10:07 A.M.)
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 1/16/22